

Ten 10 Minute Supervisor #9

Fact Sheet: *Exemption from Overtime Pay*

Overtime pay is one of the top three employment issues frequently litigated in court. In Washington State, failure to pay earned overtime results in awards of at least double damages plus all attorney fees. These facts make the issue worthy of the attention of all conservation district supervisors.

Application and interpretation of the overtime provisions in the federal Fair Labor Standards Act (FLSA) and the Washington Minimum Wage Act (MWA) is very complex. The Field Operations Managers have noted a significant level of confusion among district supervisors and staff on this issue. To help reduce your confusion and risk, we want to provide some basic information.

To qualify for a legal exemption from overtime pay, an employee must meet a three-part test (some computer professionals also qualify under separate rules). If an employee does not pass the test, they are considered non-exempt and must be paid overtime.

1. The employee must exercise independent judgement and discretion as an executive, administrative, or professional employee of the district.
 - A. An executive manages a district, supervises employees, and can hire or fire employees (or at least substantially effect those decisions).
 - B. An administrative employee works directly on management policies and district operations, and assists the executive or performs work requiring specialized skills under general supervision.
 - C. A professional employee requires an advanced education and does original or creative work with a predominantly intellectual and varied work product.
2. At least 80% of an employee's work must be executive, administrative, or professional in nature.
3. The employee must be paid on a salary basis.
 - A. Consistently receive the same salary week after week with no reductions for variations in quality or quantity of work.
 - B. Not required to provide a rigid accounting for all work and exchange time (within limits of government accountability).
 - C. Any disciplinary penalties that include salary deductions must be in full week increments.

There is a fourth test related to rate of pay, but the threshold is so low that almost all employees qualify. The threshold is >\$155/week for executive or administrative exemptions and >\$170/week for professional exemptions.

We believe the lowest risk for your district is to have no exempt employees. For any employees you classify as exempt, we strongly recommend you carefully consider and apply the three part test. If you have any questions or concerns, seek qualified legal counsel. Additional information can be found at <http://www.mrsc.org/legal/flsa/flsaweb.htm>.

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Checklist: *Rules for Overtime Pay*

1. If a non-exempt (see *Fact Sheet*) employee works over 40 hours in any work week, the employee must be paid for the overtime hours at 1 ½ times the hourly pay rate (or more).
2. Work hours do not include sick, vacation, holiday, or any other type of leave.
3. The district is free to define the start and end of the seven day period that constitutes the work week.
4. The non-exempt employee may opt to take time off in lieu of pay: the employee is awarded 1 ½ hours off for every hour of overtime worked.
5. An alternative is to provide a flexible schedule for employees: if over eight hours are worked one day, but an employee takes off an equivalent number of hours on another day **within the same work week** (keeping total hours worked for the week to 40), then no overtime is due.
6. The district may adopt a policy that requires prior approval to work overtime.
7. If an employee works overtime, but did not obtain permission per district policy:
 - A. The district is still legally obligated to pay the overtime.
 - B. The district is also obligated to discipline the employee per district policy.
8. Some grants will pay for overtime, other grants will not; check to make sure before vouchering for overtime or using a composite rate that includes overtime!